SUPREME COURT OF THE UNITED STATES.

No. 355.

THE UNITED STATES, PLAINTIFFS,

vs.

WILLIAM CRAFT.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to sixteen, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the United States *against* William Craft, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourth day of Dec'r, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the said United States the ninety-first.

[L. S.] KENNETH G. WHITE, *Clerk.*

[5-ct. rev. stamp, cancelled.]

2 Circuit court of the United States of America for the southern district of New York, in the second circuit.

At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, begun and held at the city of New York, within and for the district and circuit aforesaid, on the third Monday of October, in the year of our Lord one thousand eight hundred and sixty-six, and continued by adjournment to and including the 21st day of November, in the year of our Lord one thousand eight hundred and sixty-six.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid, on their oath present that William Craft, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the 29th day of October, in the year of our Lord one thousand eight hundred and sixty-six, at the southern district of New York, and within the jurisdiction of this court, did knowingly engage and was concerned in the business of a lottery dealer, without having paid the special tax in that behalf required by the laws of the United States, under the rules and regulations prescribed by the Secretary of the Treasury, which said rules and regulations are as follows; that is to say:

Regulations under which persons are to pay special tax as lottery dealers.

TREASURY DEPARTMENT,
Washington, August 29th, 1866.

Section 9 of the amendatory act of July 13th, 1866, provides that lottery ticket dealers shall pay a special tax of one hundred
3 dollars: "*Provided*, That the managers of any lottery shall give bond in the sum of one thousand dollars that the person paying such tax shall not sell any tickets or supplementary ticket of such lottery which has not been duly stamped according to law, and that he will pay the tax imposed by law upon the gross receipts of his sales."

The amendatory act of July 27th, 1866, provides "That all persons and every person who shall engage, or be concerned in the business of a lottery dealer without paying the special tax therefor, under such rules and regulations as shall be prescribed by the Secretary of the Treasury, shall forfeit and pay a penalty of one thousand dollars, to be assessed by the assessor of the proper district, and collected as assessed taxes are collected, subject, nevertheless, to the provisions of law relating to erroneous assessments; and shall, on conviction by any court of competent jurisdiction, suffer imprisonment for a period not exceeding a year, at the discretion of the court. And it shall be the duty of all managers and proprietors and their agents to keep, or cause to be kept, just and true books of account, wherein all their transactions shall be plainly and legibly set forth, which books of account shall at all reasonable times and hours be subject to the inspection of the assessor, assistant assessor, revenue agent, and inspector of the proper district; and any manager, proprietor, agent, or vendor under this act, who shall refuse or prohibit such inspection of his or their books, as aforesaid, shall pay a penalty of one thousand dollars, and suffer imprisonment for a
4 term not exceeding one year for every such offence."

The following regulations are, therefore, prescribed: When any person desires to engage in business as a "lottery ticket dealer," he shall—

1st. Make return in the usual form to the assessor of the district in which he is located, which return shall state, in addition to the

other information now required, the name or names of the managers or proprietors for whom he acts, with their place of business.

2d. Before paying the special tax of $100 to the collector, the applicant must procure and present to that officer the duly executed bond of the managers of the lottery in which such applicant proposes to deal. If he proposes to deal in the tickets or numbers of more than one lottery, he must procure and present to the collector the separate bond of the managers of each different lottery in which he proposes to deal; and he will not be allowed to deal in the tickets or numbers of any lottery whose managers have not furnished bond for him. When, however, a single person or firm is the manager of several lotteries, then one bond furnished by such person or firm will be sufficient for a dealer in these several lotteries.

3d. The bond or bonds, so to be given, are to be conditioned in the sum of one thousand dollars, that the person who has paid the tax to do business in the lottery or lotteries, of which the
5 obligors are managers, shall not sell any ticket or supplementary ticket of such lottery or lotteries which has not been duly stamped according to law with the name of the vendor of the ticket or supplementary ticket, and with the date of sale; and that he will pay the tax imposed by law on the gross receipts of his sales. The form of the bonds must also be first approved by the Commissioner of Internal Revenue.

4th. Any person dealing in the tickets or numbers of any lottery or lotteries, in violation of the above rules and regulations, will be liable to the penalty imposed by law for every such violation; and this penalty will be enforced in the most summary manner.

Collectors of internal revenue are required to enforce the strict observance of these regulations in their respective districts.

Approved: H. McCULLOCH,
Secretary of the Treasury.

Attest: E. A. ROLLINS,
Commissioner Internal Revenue.

Against the peace of the said United States and their dignity, and against the form of the statute of the said United States in such case made and provided.

Second count.

6 And the jurors aforesaid, on their oath aforesaid, do further present, that William Craft, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-ninth day of October, in the year one thousand eight hundred and sixty-six, at the southern district of New York, and within the jurisdiction of this court, did knowingly engage and was concerned in the business of a lottery ticket dealer without paying the special tax therefor under such rules and regulations as were, prior to the said twenty-ninth day of October, pre-

scribed by the Secretary of the Treasury, as is in that behalf required by the statutes of the United States, which said rules and regulations are as follows; that is to say:

TREASURY DEPARTMENT,
Washington, August 29th, 1866.

Regulations under which persons are to pay special tax as lottery dealers:

Section 9 of the amendatory act of July 13th, 1866, provides, that lottery ticket dealers shall pay a special tax of one hundred dollars: "*Provided*, That the managers of any lottery shall give bond in the sum of one thousand dollars that the person paying such tax shall not sell any tickets or supplementary ticket of such lottery which has not been duly stamped according to law; and that he will
7 pay the tax imposed by law upon the gross receipts of his sales."

The amendatory act of July 27, 1866, provides, "That all persons and every person who shall engage or be concerned in the business of a lottery dealer without paying the special tax therefor, under such rules and regulations as shall be prescribed by the Secretary of the Treasury, shall forfeit and pay a penalty of one thousand dollars, to be assessed by the assessor of the proper district, and collected as assessed taxes are collected, subject, nevertheless, to the provisions of law relating to erroneous assessments, and shall, on conviction by any court of competent jurisdiction, suffer imprisonment for a period not exceeding a year, at the discretion of the court. And it shall be the duty of all managers and proprietors and their agents to keep, or cause to be kept, just and true books of account, wherein all their transactions shall be plainly and legibly set forth, which books of account shall at all reasonable times and hours be subject to the inspection of the assessor, assistant assessor, revenue agent, and inspector of the proper district; and any manager, proprietor, agent, or vendor under this act, who shall refuse or prohibit such inspection of his or their books, as aforesaid, shall pay a penalty of one thousand dollars, and suffer imprisonment for a term not exceeding one
8 year for every such offence."

The following regulations are therefore prescribed: When any person desires to engage in business as a "lottery ticket dealer," he shall—

1st. Make return in the usual form to the assessor of the district in which he is located, which return shall state, in addition to other information now required, the name or names of the managers or proprietors for whom he acts, with their place of business.

2d. Before paying the special tax of $100 to the collector the applicant must procure and present to that officer the duly executed bond of the managers of the lottery in which such applicant proposes to deal. If he proposes to deal in the tickets or numbers of more than one lottery, he must procure and present to the collector the separate bond of the managers of each different lottery in which he proposes to deal; and he will not be allowed to deal in the tickets or

numbers of any lottery whose managers have not furnished bond for him. When, however, a single person or firm is the manager of several lotteries, then one bond furnished by such person or firm will be sufficient for a dealer in these several lotteries.

3d. The bond or bonds, so to be given, are to be conditioned in the sum of one thousand dollars, that the person who has paid the tax to do business in the lottery or lotteries, of which the ob-
9 ligors are managers, shall not sell any ticket or supplementary ticket of such lottery or lotteries which has not been duly stamped according to law, with the name of the vendor of the ticket or supplementary ticket, and with the date of sale; and that he will pay the tax imposed by law on the gross receipts of his sales. The form of the bonds must also be first approved by the Commissioner of Internal Revenue.

4th. Any person dealing in the tickets or numbers of any lottery or lotteries, in violation of the above rules and regulations, will be liable to the penalty imposed by law for every such violation; and this penalty will be enforced in the most summary manner. Collectors of internal revenue are required to enforce the strict observance of these regulations in their respective districts.

Approved:

H. McCULLOCH,
Secretary of Treasury.

Attest:

E. A. ROLLINS,
Commissioner Internal Revenue.

Against the peace of the said United States and their dignity and against the form of the statute of the said United States in such case made and provided.

SAM'L G. COURTNEY,
United States District Attorney.

10 Bond cancelled and prisoner discharged on his own recognizance.

Indictment for exercising the trade of a lottery ticket dealer without paying the special tax. Act of ch. § .

S. G. COURTNEY,
U. S. District Attorney.

A true bill.

C. ABERNETHY, *Foreman.*

Filed Nov. 21, 1866.

11 U. S. circuit court, southern dist. of New York.

UNITED STATES
v.
WILLIAM CRAFT.

And the said William Craft, by Samuel G. Adams, his attorney, cometh into court here, and having heard the said indictment read,

says that the said indictment and the said matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law; and that he, the said William Craft, is not bound by the law of the land to answer the same, and that he is ready to verify; wherefore, for want of a sufficient indictment in this behalf, the said William Craft prays judgment, and that by the court he may be dismissed and discharged from the said premises in the indictment specified.

SAM'L G. ADAMS.

12 Indorsed: The United States *v.* William Craft, demurrer.

Filed Nov. 27, 1866.

13 Circuit court of the United States for the southern district of New York.

THE UNITED STATES
vs.
WILLIAM CRAFT.

And Samuel G. Courtney, United States attorney for the southern district of New York, who prosecutes for the said United States in this behalf, saith that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law to compel the said William Craft to answer the same, and the said Samuel G. Courtney, who prosecutes as aforesaid, is ready to verify and prove the same as the court here shall direct and award, whereupon, inasmuch as the said William Craft hath not answered to the said indictment, nor hitherto in any manner denied the same, the said Samuel G. Courtney, for the said United States, prays judgment, and that the said William Craft may be convicted of the premises in the said indictment specified.

SAMUEL G. COURTNEY,
U. S. Attorney for the Southern Dist. of New York.

Indorsed: U. S. circuit court. The United States *v.* William Craft, joinder in demurrer.

14 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on the 20th day of Nov., in the year of our Lord one thousand eight hundred and sixty-six.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States, and the Hon. David A. Smalley, dist. judge.

THE UNITED STATES
v.
WILLIAM CRAFT.

This cause coming on to be heard at a circuit court of the United States, held in and for the southern district of New York, on the

thirtieth day of November, A. D. 1866, of the term of October, of said year, upon a demurrer to the indictment therefore duly found, which indictment, demurrer, and the joinder thereto, are hereto annexed.

And thereupon the judges of this court proceeded to hear the arguments of counsel and to consider the said cause, whereupon and during such hearing a question occurred upon which the opinions of the said judges were opposed, which said question is the following:

"Is the law imposing the special tax in the said indictment mentioned, and for non-payment of which by the defendant the same was preferred and found, valid, or is the said law, in so far as it authorizes the levy and collection of such tax, unconstitutional and void."

And upon the happening of the said disagreement the counsel for the plaintiff did request the point thereof to be stated, under the direction of the said judges, which having been done as before set forth, and no judgment having been entered in the said cause, the said point of disagreement is hereby upon such request stated as aforesaid, and certified under the seal of this court to the Supreme Court of the United States for its opinion and direction in the premises.

Indorsed: United States circuit court, southern dist. of New York. The United States *v.* William Craft, certificate of division of opinion.

Filed Nov. 30th, 1866.